BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of	)	
	)	
JAMES A. KAY, JR.	)	**WT Docket No. 94-147**
	)	
Licensee of one hundred fifty two Part 90 licenses in the Los Angeles, California area	)	

To: The Commission

PETITION FOR RECONSIDERATION

James A. Kay, Jr. ("Kay"), by his attorneys and pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405(a), and Section 1.106 of the Commission's Rules and Regulations, 47 C.F.R. § 1.106, hereby respectfully petitions the Commission to reconsider the *Memorandum Opinion and Order* ("*MO&O*"), FCC 98-207 (released August 24, 1998), whereby Kay's *Petition for Extraordinary Relief* in the above-captioned matter was denied, and his *Motion for Stay of Procedural Dates* was dismissed as moot. In support of this request for reconsideration, the following is respectfully shown:

I. INSUFFICIENT NOTICE

The Commission rejected Kay's assertion that the *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture* ("*HDO*"), 10 FCC Rcd 2062 (1994), did not provide Kay with adequate notice of the issues against him, thereby violating Section 5(a) of the Administrative Procedure Act, 5 U.S.C. § 554(b)(3), and Section 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 312(c). *MO&O* at ¶¶ 9.

It is indisputable that the *HDO* itself fails to give legally insufficient notice as to virtually every issue other than the so-called Section 308(b) issues. The *HDO* merely references regulatory provisions Kay is alleged to have violated, but provides absolutely no factual allegations or information as to when, where, or how Kay allegedly violated the provisions. For example, issue (c) asserts is set "[t]o determine if Kay has willfully or repeatedly violated any of the Commission's construction and operation requirements in violation of Sections 90.155, 90.157, 90.313, 90.623, 90.627, 90.631, and 90.633 of the Commission's Rules," *HDO* at ¶ 2(c), but provides no information beyond the summary assertion that these rules may have been violated. Kay holds more than 150 licenses representing over 300 base station locations. The *HDO* does not disclose which of these facilities was not constructed or operated in accordance with the rules, nor does it disclose the time and nature of the alleged violations; rather, it merely cites the legal provisions Kay is alleged to have violated. This does not pass due process muster. *See Soule Glas & Glazing Co. v. NLRB*, 652 F.2d 1055, 1074 (1st Cir. 1981); *Bloch v., Ambach*, 73 N.Y.2d 323, 332 (1989).

The Commission nonetheless finds that there were "other sources of notice available to Kay." *MO&O* at ¶ 9. Thus, Kay's notice concerns are brushed aside because he was given the opportunity to serve interrogatories on the Bureau and file Freedom of Information Act requests. *Id.* This analysis ignores the fact that the Bureau provided Kay with false information in response to his discovery requests, and that both the Bureau and the Presiding Judge have thwarted efforts of Kay to obtain more specific information underlying the specific allegations against him. For example, in response to interrogatories presented by Kay, the Bureau identified a Mr. Richard Lewis as one believed "to have knowledge of instances of deliberate and/or malicious interference" by Kay, *Wireless Telecommunications Bureau's Response to Kay's First Set of Interrogatories* (served on March 8, 1995 in WT Docket No. 94-147) (hereinafter "*WTB Interrogatory Responses*") at p. 16, Response 4-1, and "to have direct knowledge of relevant facts relating to instances of abuse of process" by Kay. *Id.* at p. 19, Response 5-1. Yet during a deposition in a separate civil proceeding, Mr. Lewis made clear that Kay had *resolved*, not caused, an interference problem, and he expressly denied that "Mr. Kay did anything wrong, improprietous or unethical in his business dealings with" Mr. Lewis. *See Petition for Extraordinary Relief* at pp. 52-64. Kay experienced similar results with many of the other persons who were falsely represented by the Bureau to have information regarding the designated issues. This further frustrated his efforts to learn the nature of the charges against him. The Bureau used false interrogatory responses to send him on a wild goose chase, and now has the audacity to cite the interrogatories as a defense against failure to adequately inform Kay.

After conducting such discovery as he was afforded, Kay still was unable to learn the specifics of the allegations against him. He thus served on the Bureau further interrogatories seeking more specifics, *e.g.*, the call signs of stations allegedly not constructed in accordance with the regulations, the details of alleged instances of intentional interference (when the interference allegedly occurred, against whom, on what frequency, etc.), but both the Bureau and the Presiding Judge rebuffed Kay in this effort. *See Memorandum Opinion and Order*, FCC 98M-55, released May 15, 1998; *Memorandum Opinion and Order*, FCC 98M-42, released April 7, 1998. Indeed, the Presiding Judge came to the fantastic conclusion that the he need not concern himself with statutory notice requirements because Kay's "knowledge of the conduct of his business" should be adequate to inform him whether he committed any of the alleged violations. *Memorandum Opinion and Order*, FCC 98M-55, at ¶ 8. That reasoning leads to the absurd conclusion that the Commission may, at any time summarily accuse any licensee of any violation and need not provide the licensee with any factual details other than to specify the particular statute or regulation allegedly violated, because the licensee's knowledge of his own business is adequate to inform him of the details of any violations he may have committed. Such twisted logic effectively repeals explicit statutory notice requirements, something that neither the Presiding Judge, the Bureau, nor the Commission has the power to do.

Kay urges the Commission to reconsider, on policy if not legal grounds, the dubious conclusion too hastily reached in the *MO&O*.

II. IMPROVIDENT DESIGNATION OF HEARING

The Commission also rejected Kay's demonstration that the designation of this proceeding was improperly motivated and insufficiently justified by the Bureau. *MO&O* at ¶¶ 10-15. For the reasons discussed below, the Commission is urged to reconsider and to hold these proceedings in abeyance pending a complete investigation of the Bureau's misconduct in the investigation, designation, and prosecution of this case.

A. Inadequate Investigation

In investigating this matter and arranging for the designation of this case against Kay, the Bureau relied on the unsworn and unsubstantiated allegations of a handful of Kay's competitors. Although these were persons known by the Bureau to be biased against Kay, the Bureau did nothing to test the veracity or accuracy of the allegations. In some cases, the Bureau ignored direct information that allegations being made against Kay were false. The Commission brushes this aside, stating that it is perfectly proper to conduct investigations based on complaints of competitors. *MO&O* at ¶ 10. While that may be true, it is not unconditionally so--it does not mean that the Bureau has unbridled discretion to accept as valid any and all biased accusations with no responsibility whatsoever to apply at least some threshold test of reliability. While it may be within the Bureau's discretion to investigate and pursue enforcement actions based on allegations from biased sources, in this case the Bureau grossly abused that discretion.

The Commission parrots the Bureau's refrain that there were "numerous complaints" against Kay, thereby warranting the investigation and enforcement actions against him. In point of fact, the "numerous complaints" came from a grant total of two real and one fictitious source. The only complaints specifically identified by the Bureau came from the Picks (Gerard and Harold Pick, proprietors of Communications Consultants and Systems and competitors of Kay), Mr. Chris Killian (proprietor of Carrier Communications, also a Kay competitor), and one William Drareg (allegedly of William Drareg and Associates).[1] See *WTB Interrogatory Responses* at pp. 5-6, Responses 2-1 through 2-3, and Attachments 1-17 and 23.

[1] After a diligent investigation by Kay, it appears that there is no William Drareg, and their certainly is not and was never any William Drareg and Associates located at 1800 Century Park in Century City, the return address on an alleged complaint against Kay. *See WTB Interrogatory Responses*, Attachment No. 2. On information and belief after due investigation, Kay believes that William Drareg is a fictitious name and that the alleged complaint was actually submitted under false pretenses by Mr. Gerard Pick. (Note that: (a) "Drareg" is "Gerard" spelled backwards, and (b) the physical format and layout as well as the handwritten portions of the complaint are strikingly similar to complaints filed by the Picks.) Kay has on several occasions called this to the Bureau's attention, but not only has the Bureau ignored Kay, it proceeded to rely on the falsified complaint from a nonexistent fantasy man as part of its justification for proceeding against Kay.

The credibility and reliability of Messrs. Pick and Killian are in substantial and serious doubt. *See Petition for Extraordinary Relief* at pp. 18-19 (demonstrating that Gerard and Harold Pick submitted false sworn statements and forged documents to the Commission in a contested matter), at pp. 20-22 (demonstrating that Harold Pick participated with James Doering, another Kay competitor, in a scheme to submit a forged assignment of license application containing false representations to the Commission), and at pp. 25-30 (demonstrating that Chris Killian misrepresented to and lacked candor with the Commission by concealing his real party in interest statement in an application submitted by him through his spouse). It is no answer to say, as the Commission does, that Mr. Pick will not be called to testify at the hearing and that the credibility of Mr. Killian can be tested by the Presiding Judge at the hearing. The issue at hand is the propriety of the initial investigation and designation of the hearing. This can not be resolved after the fact. The Presiding Judge has, in further demonstration of his unceasing bias against Kay, categorically refused to allow Kay to conduct discovery into (a) the specific conduct by Killian that establishes his lack of credibility,[2] and (b) the underlying basis for some of the substantive allegations by Killian against Kay.[3]

Kay does not dispute the general principal that the Commission staff can and should consider information provided by competitors in pursuing its enforcement activities. But the staff has a responsibility to act with due care and engage in at least some critical evaluation of the information it receives before bringing down the full regulatory weight of its enforcement mechanism on a licensee. When allegations are from biased sources whom the Bureau knows are in hotly contested proceedings with the accused, when there is information before the Bureau calling into question the accuracy of the information provided and/or the credibility of the informant, and when the many of the accusations could be tested through minimal follow-up investigation, it is an abuse of discretion for the Bureau to simply accept and rely upon the untested, unverified, and uncorroborated accusations. Indeed, if this were adequate to justify a revocation hearing, the Commission would not even need an enforcement staff--it could simply allow a licensee's competitors to prepare hearing designation orders!

B. Abuse of Discovery

The Commission acknowledges, but then never addresses, that one of Kay's complaints is that the Bureau designated this hearing without adequate justification for most of the issues and with the intention of improperly using discovery as a fishing expedition to make a case against Kay after the fact. *MO&O* at ¶ 5(a). Kay fully developed and

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[2] The Presiding Judge expressly forbade Kay from examining Killian, during his deposition, on the matters addressed at pages 25-30 of the *Petition for Extraordinary Relief*, even though these matters are clearly pertinent to Mr. Killian's credibility.

[3] One or more employees or agents of Mr. Killian allegedly conducted a telephone survey purporting to demonstrate inadequate loading by Kay. Kay was precluded, in discovery, from inquiring into the details of this survey, including who conducted it or the methodology employed.

substantiated his position in this regard, including the presentation of a memorandum from staff expressly admitting that this was the Bureau's intentional strategy. *Petition for Extraordinary Relief* at pp. 6-13. Kay further noted that the Bureau was effectively forced to drop two issues--issue (b), alleging illegal trunking by Kay, and issue (f), alleging that Kay had improperly obtained license cancellations from other licensees. *Id.* at pp. 12-13. The only treatment of this concern by the Commission is as follows:

> Kay contends that the Bureau should have known prior to designation that issues (b) and (f) were unfounded. The ultimate dismissal of an issue, however, does not imply that it was wrongly designated. The availability of summary procedures in hearing proceedings is based on the premise that it may be proper to dispose of validly designated issues without a full evidentiary hearing.

MO&O at n. 1. But this is, once again, a statement of general principle that is utterly inapposite to the facts of this case.

In dropping issue (b), the trunking issue, the Bureau stated that Kay was using the E.F. Johnson LTR trunking format in a manner consistent with an advisory letter, dated June 21, 1993, issued by Rosalind K. Allen, then Chief of the Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, and disputes Kay's assertion that the Bureau knew or should have known, prior to designation, that Kay's system was configured in full compliance with the advisory letter. The Bureau claims that it was unable to make this determination until Kay belatedly provided technical information during discovery. *Wireless Telecommunications Bureau's Opposition to Petition for Extraordinary Relief* at ¶ 15. That is blatantly false.

The essence of the 1993 advisory letter is that it is permissible to employ a system configuration whereby two or more conventional stations are equipped with carrier operated relays designed to prevent the mobiles from accessing that base station if there is activity on the channel. This causes the mobile to access a different channel in the system that is not currently busy. (If there is no activity on the channel, the carrier operated relay at the base station is not triggered, and the mobile is able to access that repeater.) This effectively gives the mobile unit access to multiple conventional stations, even though the mobile operator cannot directly monitor the channel, without being "trunked" in the pure technical sense. It provides much of the efficiency of trunking without significant risk of interference to other co-channel users. Ms. Allen's 1993 advisory letter stated that "this enhanced mode of operation is ... permissible for SMR-conventional stations."

In interrogatories to the Bureau, Kay inquired as to the basis for the designated issue asserting that Kay had improperly operated conventional stations in trunked mode. The Bureau responded by describing the details of an inspection of Kay's Station WNWK982 conducted by FCC field personnel on July 22, 1994--more than five months prior to the *HDO*. *WTB Interrogatory Responses*, Response 2-7. The two critical factors gleaned from the investigation that led the Bureau to the conclusion that the station was being improperly operated in trunked mode were: (a) the presence of periodic data bursts that were correctly identified as being a scheme used in E.F. Johnson LTR trunking

format to update mobiles and to detect mobiles wishing to communicate with the system, and (b) the existence of a physical repeater network data link (RNDL) cable between this repeater and several others. Both of these are typical components of the LTR format approved in the 1993 advisory letter. The Commission field personnel who conducted the inspection were later deposed by Kay, and they admitted that the system appeared to be in conformance with the advisory letter.

Thus, the Bureau had in its possession, as early as July of 1994--more than five months prior to designation--the very information on which it now bases its belated decision to drop the issue. Ironically, the factors that the Commission originally cited as evidence that Kay was in violation of the rules (the data burst and the RNDL cable) are the same factors that now prevent the Bureau from pursuing the issue more than four years later. This information was known to the Bureau well in advance of designation. The Bureau nonetheless improperly designated the issue in order to further defame Kay and to provide false justification for its broad discovery-based fishing expedition. It is one thing to designate an issue based on incomplete indication of a potential violation and then to use discovery to further inquire. It is quite another thing, however, to designate an issue without *any* justification, when pressed for justification to cite information that is actually exculpatory and that was known long before designation, and then to drop the issue after subjecting the licensee to four years of microscopic examination about the false issue in hopes of discovering something damaging. That is an abuse of process, and it is utterly improper for the Commission to lightly brush it aside.

The Bureau is equally disingenuous regarding its decision not to pursue issue (f), which was designated "[t]o determine whether [Kay] has abused the Commission's processes in order to obtain cancellation of other licenses." In dropping the issue the Bureau stated: "The Bureau has taken discovery regarding the complaints it has received and has decided that the allegations of misconduct ... of which the Bureau is aware involve allegations of civil fraud or contractual disputes more appropriately resolved in civil courts of competent jurisdiction." *Wireless Telecommunications Bureau's Statement of Readiness for Hearing*, filed June 3, 1998, at ¶ 20.[4] The Bureau studiously makes it sound as if there is evidence of wrongdoing, but which would best be pursued in another forum, and the

[4] This is a contradictory position for the Bureau. Kay has repeatedly attempted, without success, to engage the Bureau in settlement discussions in an effort to negotiate a resolution of this matter settle this matter without further litigation. The Bureau has taken the position that it is bound by the desires of the Commission as expressed in the designation order, and it has steadfastly refused to entertain meaningful settlement discussions. But now we see the Bureau unilaterally deciding that this is not the proper forum in which to litigate an issue that the Commission has expressly designated for litigation here. To be clear, the Bureau does not say there is no evidence to justify the issue--indeed, it falsely implies that such evidence was found during discovery--rather, the Bureau has substituted its judgment for that of the Commission regarding the proper forum in which to address this matter. It is curious that the Bureau so quickly dismisses the Commission's directives when it will serve to prevent exposure of the Bureau's improper treatment of Kay, while at the same time hiding behind a feigned adherence to Commission directive in order to avoid resolving this matter expeditiously. Clearly, such duplicity is born of a personal animus determined to destroy Kay at any cost.

Bureau thereby intentionally creates a false impression. The real reason the Bureau dropped the issue is because the alleged victims of Mr. Kay's imagined crimes are nowhere to be found.

Kay has, either in the course of this proceeding or in the context of other civil litigation, deposed most, if not all, of the persons identified by the Bureau as having information regarding this alleged misconduct by Kay. He has yet to find someone who knows or will even allege anything of the sort. Rather, they are all like Richard Lewis, asserted by the Bureau to have been a victim of Kay's schemes to misappropriate licenses from others, but who under oath succinctly and clearly denied that "Mr. Kay did anything wrong, improprietous or unethical in his business dealings with" Mr. Lewis. *See Petition for Extraordinary Relief* at pp. 52-64. The reality is that the Bureau has dropped this issue for fear that Kay, at hearing, will further test the ostensible witnesses to learn that the Bureau (a) lied when it represented to Kay that these people had information about the alleged violation, and/or (b) perhaps even suborned false sworn accusations from other potential witnesses in the same manner as it did with Mr. Lewis.

III. PROSECUTORIAL MISCONDUCT

It is particularly distressing to Kay that the Commission would simply brush aside with virtually no consideration or analysis the extensive evidence presented by Kay regarding serious misconduct by the Bureau in the handling of the investigation, designation, and prosecution of this case. Unlike the Bureau's allegations against Kay, the charges against the Bureau are detailed and fully supported by extensive documentary evidence, in most cases consisting of testimony given by witnesses under oath, sworn declaration, or documents or other information suitable for official notice. The Bureau has denied virtually none of the factual assertions--and offers no support for the few factual denials it does make--but rather relies on legal sophistry and obfuscation to avoid being accountable. The short shrift given these serious but well substantiated assertions in the *MO&O* is woefully inadequate and should be reexamined.

A. Preferential Treatment of Informants and Complainant Against Kay

Kay made an extensive and irrefutable showing that, as to four different persons who had complained of, informed on, and/or are potential witnesses against Kay, the Bureau has steadfastly refused to take any enforcement actions in the face of conclusive showings of conduct at least as bad, if not far worse, than that alleged against Kay. These individuals are being effectively rewarded for their assistance in the Bureau's obsessive quest to bring down Kay. *Request for Extraordinary Relief* at pp. 13-34.

The Commission maintains that the Bureau is more like a prosecutor, and therefore need not maintain an entirely unbiased posture, provided it does not engage in "outrageous conduct that offends fundamental fairness and shocks the universal sense of justice." *MO&O* at ¶ 13. If the Commission is not outraged by fully substantiated and

unrefuted showings that the Bureau is offering preferential treatment to potentially unqualified licensees in exchange for assistance in "getting" a licensee with whom the Bureau has a personal problem; if the Commission is not offended by the Bureau's apparent willingness to abuse the Commission's own procedures in its quest for an enforcement "head on the wall"; and if the Commission is not shocked by evidence that the Bureau would go so far as to rely on information it knows or should know is false and even to go so far as to suborn false statements against an enforcement target, then there is no longer any fundamental fairness to be protected in Commission proceedings.

In any event, the Commission's attempt to analogize the Bureau to a criminal prosecutor limps. While the Bureau is, in some respects, performing the functions of a prosecutor, it is also an agent of the Commission, obligated to discharge itself in the public interest. The Bureau's selective prosecution of Kay is clearly at odds with established FCC jurisprudence. The Commission, and hence the Bureau, may not properly seek the harshest of penalties against one licensee while giving several similarly situated licensees an indefinite pass. *See Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965). That is true even when the Commission merely neglects or refuses to explain the reason for the disparate treatment, *id.*, and it is more so true when it is clear that the only explanation for the disparate treatment is bias against the disadvantaged licensee.

Kay has made out a well documented, fully substantiated, prima facie case of improper discriminatory conduct by the Bureau, and the Commission should not brush it aside with mere platitudes. The Commission most certainly should not subject Kay to a revocation hearing born of and supported by such conduct unless and until the matter is fully investigated and remedied.

B. Improper Communications With Kay's Competitors

The Commission summarily dismisses Kay's fear that the Bureau was likely to disclose competitively sensitive information to his competitors by simply relying on the Bureau's self-serving denial that it intended to do so. *MO&O* at n.3. Strikingly absent from the Commission's analysis is any explanation of (a) why Kay's apprehension was not reasonable in light of intentional efforts to damage him by a Commission employee's ex parte communications during a finder's preference proceeding, *Request for Extraordinary Relief* at pp. 38-42; (b) the staff's refusal to assist him in addressing theft of service problems, *id.* at pp. 42-45; and (c) the Bureau's demand that Kay provide 50 copies of the information requested; *id.* at p. 35.[5]

[5] It is noted that the most copies of submissions called for in any type of proceeding under the Commission's regulations is fourteen. 47 C.F.R. § 1.51(a)(2). It is inconceivable that the Bureau required more than quadruple that number of copies if the proprietary information it sought from Kay was to be used only internally.

C. **Reliance On and Solicitation of False Statements.**

The most serious of the Bureau's improprieties is its reliance on statements that it knew or should have known, in the exercise of reasonably prudent care, were false, and in at least one instance, the Bureau's affirmative coaching of a potential witness to give a false statement under oath against Kay (*i.e.*, the sworn false statements of Harold Pick and Richard Lewis). *Request for Extraordinary Relief* at pp. 45-65. The Commission asserts that it has "examined the two instances of alleged false statements regarding Kay in sworn declarations obtained by the Bureau," *MO&O* at ¶ 15, but its ostensible analysis leaves much to be desired. The Commission first echoes the Bureau's impotent defense that neither Pick nor Lewis will be called as witnesses. *Id.* The Commission seems to be saying that the Bureau has no obligation to seek the truth in conducting its investigation, that it may negligently rely on false statements, and even go so far as affirmatively suborning false sworn statements, so long as it drops the perjurer from the witness list if it is caught. That is absurd, outrageous, and unlawful.

The Commission reasons that "[t]here is no showing the Bureau was aware that any statement in Pick's declaration was misleading." *Id.* To set the record state, the crucial statement in Pick's declaration was not merely misleading--it was not even "legally accurate"--it was patently false. Second, whether or not the Bureau actually knew it was false, the Bureau most certainly *should* have known it was false. Pick was making a very serious allegation against Kay, an allegation that Kay had committed a felony. This could have easily been tested with minimal follow-up. The Bureau knew Pick was a bitter enemy of Kay. The Bureau was in possession of a conflicting statement by Pick as to the same incident. The Bureau had in its possession conclusive evidence that Pick, in a contested proceeding, had submitted a false sworn statement and forged documents. *Request for Extraordinary Relief* at pp. 45-50. It is simply not adequate, in the face of all that, for the Commission to yawn and look the other way simply because the Bureau *claims* it did not know the statement was false.

Moreover, by highlighting the assertion that the Bureau was unaware that Pick's statement was false, the Commission seems to acknowledge the obvious, namely, that the Bureau *did* know that the Lewis statement was false. It would of course be difficult for the Bureau not to know this since it was a Bureau official who fed the false information to Mr. Lewis. The best the Commission can muster in this regard is to simply ignore the conclusive evidence of and to weakly state: "The Bureau denies that the Lewis statement was the basis for making charges against Kay and indicates that its charges were based on other evidence." *MO&O* at ¶ 15. Assuming arguendo the Bureau did not rely on the Lewis statement, that still does not excuse its conduct--which was tantamount to subornation of perjury--nor does it in any way diminish Kay's legitimate concern about the conduct of the investigation against him and the nature of the evidence to be presented by the Bureau. Moreover, the assertion that the Bureau did not rely on the Lewis

statement is patently untruthful. Are we expected to believe that two Bureau employees, during a time of limited fiscal resources, flew all the way to California to interview a witness and solicit a statement on which it then did not rely?

When the Bureau was asked in discovery for the basis of its assertions regarding interference and abuse of process, it identified Richard Lewis. *WTB Interrogatory Responses* at pp. 16 & 19, Responses 4-1 & 5-1. The Bureau can not have it both ways. When Kay complains about lack of notice as to the substance and basis of the allegations against him, the Bureau points to its "extensive" interrogatory responses. Yet, when confronted with the fact that the interrogatory responses are inaccurate and even identifies an alleged sources who lacks the knowledge attributed to him and who provided a false statement at the Bureau's urging, the Bureau backpedals and says it never relied on that individual's statement. Clearly, the Bureau's story does not wash, and the Commission must reevaluate it on reconsideration.

IV. CONCLUSION

Much is wrong, improper, and even illegal in the way this matter was investigated and designated. The party responsible for that misconduct is now in charge of prosecuting the case. It is patently unfair to subject Kay to this process without first investigating, evaluating, and remedying these serious irregularities, improprieties, and illegalities.

WHEREFORE, it is respectfully requested that the Commission reconsider the *MO&O* and grant the relief requested in Section IV of the Petition for Extraordinary Relief.

Respectfully submitted September 23, 1998

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CERTIFICATE OF SERVICE

I, Robert J. Keller, counsel for James A. Kay, Jr., hereby certify that on this 23rd day of September, 1998, I caused copies of the foregoing **PETITION FOR RECONSIDERATION** to served, by facsimile with follow-up by first class United States mail, postage prepaid, on the officials and parties in WT Docket No. 94-147, as follows:

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